

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 7/16/2014
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BICKEL & BREWER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, and NATIONAL
INSTITUTE OF ENVIRONMENTAL HEALTH
SCIENCES,

Defendants.

ECF CASE

14 Civ. 2278 (GHW)

**STIPULATION OF
SETTLEMENT AND
DISMISSAL**

WHEREAS, Plaintiff Bickel & Brewer filed a Freedom of Information Act Request (the "FOIA Request") with the National Institute of Environmental Health Sciences ("NIEHS"), part of the United States Department of Health and Human Services ("DHHS") (together with NIEHS, "Defendants"), on or about May 7, 2013, seeking certain documents;

WHEREAS, NIEHS produced documents in response to the FOIA Request, but redacted certain information pursuant to FOIA Exemptions (b)(4) and (b)(5), as well as personal identifying information or other sensitive information, such as social security numbers, birth dates, institutional base salary, and account and PIN numbers, pursuant to FOIA Exemption (b)(6);

WHEREAS, Plaintiff appealed NIEHS's FOIA response and Exemption (b)(4) redactions to DHHS on or about October 2, 2013 (the "FOIA Appeal");

WHEREAS, Plaintiff's FOIA Appeal to DHHS was received during the Government shutdown;

WHEREAS, DHHS did not respond to Plaintiff's FOIA Appeal by the time that the instant action was commenced;

WHEREAS, Plaintiff filed the instant action to compel Defendants to produce complete and unredacted copies of all non-exempt documents responsive to the FOIA Request on April 1, 2014;

WHEREAS, Plaintiff's complaint asserts that Defendants failed to produce annual progress reports concerning the years 2008-2011, and challenges Defendants' invocation of Exemption (b)(4) with respect to redactions made to certain documents that were produced in response to the FOIA Request;

WHEREAS, Defendants answered the complaint on May 12, 2014, in which answer Defendants averred that no responsive documents were withheld and defended the redaction of documents pursuant to Exemption (b)(4);

WHEREAS, Defendants have verified that, based upon a search of all places responsive documents would be likely to exist and a re-examination of all records located during the agency's search, no responsive documents were withheld from NIEHS's response to the FOIA Request, and that annual progress reports for 2008-2011 referenced in the complaint do not exist;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the parties to the above entitled action, that Defendants will remove all redactions that were made pursuant to Exemption (b)(4) and will reproduce these unredacted documents to Plaintiff within fifteen (15) business days of entry of this stipulation of settlement and dismissal. Redactions made pursuant to Exemptions (b)(5) and (b)(6), which redactions were not challenged, (including evaluative information, personal identifying information or

other sensitive information, such as social security numbers, birth dates, institutional base salary, and account and PIN numbers) shall remain redacted.


IT IS HEREBY FURTHER STIPULATED AND AGREED, that all claims of the Plaintiff are dismissed with prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

IT IS HEREBY FURTHER STIPULATED AND AGREED that this dismissal is without search fees, costs, attorneys' fees, or conferral of prevailing party status pursuant to the Freedom of Information Act, 5 U.S.C. § 552, or any other federal statute.


This stipulation shall be without prejudice to Plaintiff's right to submit future requests for records pursuant to the Freedom of Information Act.

Dated: New York, New York
July 16, 2014

BICKEL & BREWER


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The parties have stipulated to the dismissal of this action under Rule 41(a)(1)(A) (ii). The Clerk of Court is directed to close the case.

Dated: July 16, 2014
New York, New York


GREGORY H. WOODS
United States District Judge